

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

MAY 10, 2000

IN RE:

**PETITION OF LYNWOOD UTILITY
CORPORATION TO CHANGE AND
INCREASE RATES AND CHARGES**

)
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) **DOCKET NO.**
) **99-00507**
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ORDER APPROVING RATE INCREASE

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on February 29, 2000 upon a Petition to Change and Increase Rates and Charges filed by Lynwood Utility Corporation ("Lynwood") on July 15, 1999. Lynwood filed an Amendment to the Petition on October 29, 1999. A Hearing in this matter was held on January 26, 2000.

Background

Lynwood Utility Company was granted a Certificate of Convenience and Necessity on June 14, 1976 to provide sewer service in Williamson County. In 1996, David Terry bought Lynwood (and changed "Company" to "Corporation") in order to serve the Legends Ridge subdivision, which he was developing. Lynwood currently serves approximately 550 residential customers located in the Cottonwood and Legends Ridge subdivisions, a few residential customers near these subdivisions, and one non-residential customer, Walnut Grove Elementary School ("Walnut Grove School").

On June 28, 1998, Lynwood entered into a "Utilities Agreement" with Lumbermen's Investment Corporation of Austin, Texas ("Lumbermen's"). Under this

agreement, Lynwood is to provide sewer service to the new 187-lot River Landing subdivision, which is being developed for Lumbermen's by a local real estate company, Smith Crowe Wilson, LLC. This agreement will bring Lynwood's customer total to approximately 750 when the subdivision is completed.

Lumbermen's discovered that Lynwood was experiencing certain financial difficulties. Most importantly, Lynwood was not collecting enough in revenues to meet current operating expenses and would have great difficulty in accommodating the River Landing development and an expansion of Legends Ridge, as it was being asked to do. After entering into the Utilities Agreement, Lumbermen's discovered that Lynwood was in default on a \$305,000 loan from First Tennessee Bank, issued on May 30, 1997, which Mr. Terry obtained to pay for improvements to Lynwood's sewer plant to serve Legends Ridge. On December 17, 1998, the loan was assigned to Lumbermen's, and Lumbermen's took over the day-to-day operation of Lynwood. Finally, Smith Crowe Wilson created Southern Utility Corporation, which purchased Lynwood from Mr. Terry on May 12, 1999. Lynwood did not seek Authority approval for the transfer of ownership to Southern Utility Corporation.

On July 15, 1999, Lynwood filed a Petition with the Authority for an increase in rates. Lynwood stated that a substantial increase would be necessary for it to meet operating expenses because the previous owners of the utility were neglectful in seeking rate increases and in collecting revenues. Lynwood's last rate increase was in 1986. Lynwood also proposed a change in its billing method. Its traditional practice has been to bill customers based on the number of bedrooms in a residence, but this has proven unsatisfactory. Lynwood proposed to base its customers' sewer bills on their actual water

usage. Lynwood proposed a residential rate of \$5.77 per 1,000 gallons of water usage, with a minimum monthly charge of \$15.00.

Lynwood further proposed to change its rates for its one non-residential customer, Walnut Grove School. Lynwood had been charging Walnut Grove School a flat monthly fee of \$787.50. The new rate was to be \$7.21 per 1,000 gallons of water usage.

Lynwood proposed a residential tap fee of \$2,750.00 and a non-residential tap fee of \$7.86 per gallon per day. Lynwood also proposed a sewer connection fee for both residential and non-residential customers of \$250.00 and a returned check charge of \$25.00.

Lynwood also submitted for Authority approval a set of revised rules and regulations governing Lynwood.

On November 2, 1999, Lynwood filed an Amendment to its Petition (the "Amendment") in which it asked for Authority approval of the \$305,000 loan from First Tennessee Bank to Lynwood and the assignment of the loan from Lynwood to Lumbermen's. The Amendment explained that the original loan was to be paid within one year and therefore did not require Authority approval pursuant to Tenn. Code Ann. § 65-4-109. Because the loan has not been paid within one year, however, it appears to fall under the requirements of Tenn. Code Ann. § 65-4-109, which requires Authority approval for issuance of any evidence of indebtedness payable in more than one year from the date thereof. The Amendment also refers to agreements between Lumbermen's and Lynwood, which called for Lumbermen's to reimburse Lynwood for the expansion cost of the sewer plant not attributable to the additional capacity necessary to serve River Landing and for funds advanced to Lynwood for operating expenses. Lynwood states

that these agreements appear to require Authority approval under Tenn. Code Ann. § 65-4-109 and requests Authority approval for them.

No persons sought intervention in this docket.

Lynwood's Hearing

A Hearing in this docket was originally scheduled for December 7, 1999. Upon motion by Lynwood, the Hearing was postponed.

The Authority issued a Notice of Hearing on January 10, 2000, and the Hearing in this docket was held on January 26, 2000. Lynwood filed the pre-filed testimony of Mr. Davis Lamb, Lynwood's president, on January 20, 2000. Among other things, Mr. Lamb stated in his pre-filed testimony that Lynwood required a rate of return of 8% on its rate base. Mr. Lamb also presented testimony during the Hearing and was questioned by the Directors. At the Hearing, Lynwood presented testimony and supporting documentation demonstrating that Lynwood's current revenue and revenue projections under its current rate structure were not sufficient to meet its operating expenses, maintain its sewer plant, or earn a fair rate of return.

Mr. Lamb explained that Lynwood's previous owner, Mr. Terry, did not require payment of tap fees from owners of lots in Legends Ridge, resulting in a loss of revenue to Lynwood. In its response to the Authority's Fourth Information Request, filed on February 8, 2000, Lynwood further explained that its large increase in tap fees is necessary because of the previous owner's waiver of tap fees for 77 lots in Legends Ridge.

Mr. Lamb also testified that the proposed rate for Lynwood's non-residential customer, Walnut Grove School, would produce revenues from that customer

substantially below the original flat monthly fee. In its response to the Authority's Fourth Information Request, Lynwood explained that this customer has apparently been over-billed, based on a calculation of Lynwood's proposed rates and the customer's water usage.

This matter came before the Authority at the regularly scheduled Authority Conference held on February 29, 2000. At that Conference, the Directors voted unanimously to approve a rate increase to Lynwood in the following manner:

1. The proposed residential rates and other charges as amended by Lynwood at the Hearing are approved.
2. The proposed non-residential rates are approved, not to exceed \$787.50 per month.
3. Lynwood's overall return on rate base is set at eight percent (8%).
4. Lynwood shall revise its contract for sewer tap services in its existing tariff to clarify that sewer tap services automatically transfer with the transfer of title to subsequent owners.
5. The proposed revisions to Lynwood's rules and regulations as requested are approved.
6. The indebtedness incurred by the new owners of Lynwood through the note assigned to Lumbermen's Investment Corporation is approved.
7. The indebtedness incurred by Lynwood through its Utilities Agreement and the two (2) amendments to that Utilities Agreement is approved.

The Directors also voted unanimously that this docket remain open for future action in this matter to address the overbilling of Walnut Grove School. Further, future

action in this matter will address the transfer of control of Lynwood from the previous owner to the current owners, which was not brought before the Authority for approval, and the alleged waiver of tap fees by Lynwood's previous owner. The Directors voted unanimously to issue a subpoena for Lynwood's previous owner to address the alleged waiver of tap fees and to appoint General Counsel or his designee as Pre-Hearing officer to issue the subpoena and to set a schedule for an additional Hearing in this matter.¹

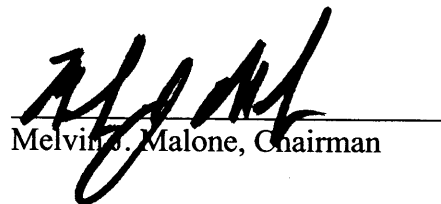
IT IS THEREFORE ORDERED THAT:

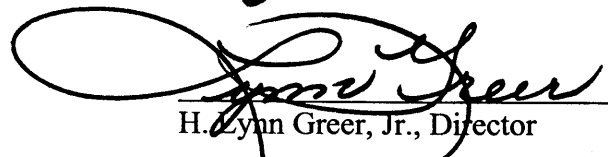
1. The proposed residential and non-residential rates and other charges included in this Order are approved.
2. The overall return on rate base is set at eight percent (8%).
3. Lynwood revise its contract for sewer tap services to include that sewer tap services transfer with the transfer of title to subsequent owners.
4. Lynwood's proposed revisions to its rules and regulations as requested are approved.
5. The indebtedness incurred by the new owners of Lynwood through the note assigned to Lumbermen's Investment Corporation is approved.
6. The indebtedness incurred by Lynwood through its Utilities Agreement and the two (2) amendments to that Utilities Agreement is approved.
7. This docket shall remain open to address: (i) the overbilling of Walnut Grove School, (ii) the transfer of Lynwood to its current owner, which was not

¹ On March 7, 2000, Lynwood filed a letter with the Authority requesting that the Authority delay further action in this docket regarding the alleged waiver of tap fees by the previous owner of Lynwood until March 27, 2000. The letter states that Lynwood and the previous owner are involved in negotiations to resolve several issues, including the tap fees waived for lots in the Legends Ridge subdivision. Further, the owners of Lynwood express concern that the issuance of a subpoena for the previous owner would adversely impact the settlement negotiations and request that the Authority allow Lynwood time to complete its negotiations.

approved by the Authority, and (iii) the alleged waiver of tap fees by Lynwood's previous owner.

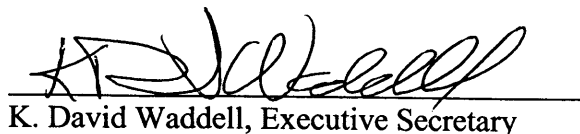
8. The General Counsel or his designee is appointed Pre-Hearing Officer in this matter to issue a subpoena for the previous owner of Lynwood and to set a Hearing to resolve the remaining issues in this docket.
9. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.
10. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary